

CALIFORNIA COASTAL COMMISSION

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**F5b**

January 29, 2004

TO: Commissioners and Interested Persons

FROM: Charles Lester, Deputy Director
Liz Fuchs, Project Manager
Steve Monowitz, Coastal Planner

SUBJECT: **SAN LUIS OBISPO COUNTY: LOCAL COASTAL PROGRAM MAJOR AMENDMENT NO. 1-03 (Phase 1 Periodic Review Implementation).** For public hearing and Commission action at its meeting of February 20, 2004 in San Diego.

SYNOPSIS

The County of San Luis Obispo is proposing to amend the Local Coastal Program as follows:

1. Amend portions of Title 23 of the Implementation Plan regarding Affordable Housing to recognize "owner builder" units as a type of affordable housing.
2. Supplement and revise the Land Use Plan (LUP) and Implementation Plan (IP) to carry out the County's Phase 1 response to the Coastal Commission Periodic Review of the San Luis Obispo County Local Coastal Program.
3. Update permitting, appeals, and noticing procedures by resubmitting amendments previously considered by the Commission in August 2002 (SLO LCPA 1-01 Part B, Procedures and Miscellaneous changes).

The submitted amendment, showing the proposed additions and deletions to the currently certified LCP using underlines and strikethroughs, is attached to this report as Exhibit 1. The Periodic Review Executive Summary and Final Recommendations (adopted by the Coastal Commission on July 1, 2001) are attached as Exhibit 2.

The proposed changes to the affordable housing ordinance contained in the LCP (see Exhibit 1a) do not raise Coastal Act issues and therefore can be approved as submitted. In contrast, the Phase 1 Periodic Review Implementation amendments, as well as the re-submittal of previously proposed procedural changes, involve significant coastal resource and public access issues. These amendments partially respond to 30 of 167 recommended LCP implementation changes identified by the Periodic Review as necessary to carry out Coastal Act policies. Preliminary evaluations of these changes were presented to the Commission at public hearings regarding the status of Periodic Review implementation efforts, conducted on March 5, June 12, and September 10 of this year.

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As discussed at those hearings, the Phase 1 amendments contain beneficial improvements to the LCP, including updated drainage standards, expanded requirements for biological evaluations and alternatives analyses, stronger limits on streambed alterations and uses within ESHA setbacks, enhanced public access policies, and more specific standards for shoreline protection. A significant weakness, however, is that in many instances the amendment merely establishes voluntary programs to address Periodic Review recommendations during future LCP updates. For example, new policies for public access planning, greenbelt formation, shoreline hazards, and concentrating development in urban areas are all dependent upon future LCP updates for implementation. Moreover, critical components of the Phase 1 amendment package needed to effectively protect environmentally sensitive habitat areas and scenic viewsheds were deleted during the local review, and will be revisited during Phase 2 implementation efforts.

Similarly, the re-submittal of procedural and miscellaneous ordinance changes previously modified by the Commission in August 20, 2002¹ provides beneficial changes that will improve the IP's ability to carry out the coastal resource protection and public participation provisions of the LUP, but only partially implements the Periodic Review. The re-submittal incorporates all the modifications previously suggested by the Commission other than those intended to clarify that Environmentally Sensitive Habitat Areas and other Sensitive Coastal Resource Areas include, but are not limited to, those shown by LCP maps. To address this important outstanding issue as well as other priority recommendations, the Commission proposed a collaborative process and timeline for Periodic Review Implementation in a letter to the County dated September 29, 2003 (attached as Exhibit 3).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the amendments **with suggested modifications** that are needed to bring the proposed LUP changes into conformance with Chapter 3 of the Coastal Act, and ensure that the IP amendments will effectively carry out the certified LUP. In accordance with the Periodic Review implementation process outlined in the Commission's September 29, 2003 letter, the suggested modifications **do not** include changes to implement outstanding coastal access and resource issues that are to be addressed in subsequent phases of the County's Periodic Review implementation efforts (e.g., the ESHA mapping issue noted above). The limited suggested modifications that are essential to achieve Coastal Act/LUP conformance include:

- Deleting the statement that comprehensive access planning is not required in agricultural areas.
- Qualifying the statement that hard ocean bottom configurations are conducive to laying trans-Pacific cable lines with an acknowledgement that although such geography may be preferred by the industry, hard ocean bottom configurations are sensitive habitat areas to be avoided.
- Clarifying that the range of project alternatives to be considered when new development is proposed within or adjacent to environmentally sensitive habitat areas is not limited to those identified by the applicant.
- Requiring implementation of project alternatives that avoid impacts to ESHA, and minimize such impacts when avoidance is not possible.

¹ San Luis Obispo County Local Coastal Program Amendment No. 1-01 Part C



- Removing the proposed exemption of new agricultural roads from the requirement to avoid sensitive habitat areas.
- Restoring language from the initial Phase 1 package that requires new or improved roads to avoid ESHA where less-environmentally damaging alternatives are available, and to mitigate the impacts of such crossing where they cannot be avoided.
- Limiting the proposed exemption of agricultural activities from riparian setback standards to nonstructural agricultural developments that incorporate best management practices².
- Requiring all development (not just residential and commercial) to implement Best Management Practices to protect coastal water quality.
- Clarifying the timing of the proposed changes to the existing drainage ordinance in relationship to the more comprehensive update of ordinance that is currently pending as LCP Amendment 1-01 Part C.

ANALYSIS CRITERIA

Generally, the relationship between the Coastal Act and a local government's Local Coastal Program (LCP) is a three-tiered hierarchy. The Coastal Act sets broad statewide policies; the Land Use Plan (LUP) portion of the LCP incorporates and refines Coastal Act policies for the local jurisdiction, giving local guidance as to the kinds, locations, and intensities of coastal development; and the Implementation Plan (IP), or zoning portion of an LCP typically sets forth zone districts and site regulations which are the final refinement specifying how coastal development is to proceed on a particular parcel. The proposed amendment affects the LUP and IP components of the County of San Luis Obispo LCP. The standard of review for land use plan amendments is that they must be consistent with the Chapter 3 policies of the Coastal Act. The standard of review for implementation plan amendments is that they must be consistent with and adequate to carry out the policies of the certified coastal land use plan.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from Steve Monowitz at the Central Coast District Office of the Coastal Commission at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

² This exemption is currently provided by LUP ESHA Policy 26



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Exhibit 1:	Amendment Submittal
Exhibit 2:	Periodic Review Executive Summary and Final Recommendations
Exhibit 3:	September 29, 2003 letter to San Luis Obispo County from the Coastal Commission regarding Periodic Review implementation
Exhibit 4:	Adopted Summary and Findings for SLO LCPA 1-01 Part B

I. STAFF RECOMMENDATION: MOTIONS AND RESOLUTIONS

Staff recommends adoption of the following resolutions:

Resolution I. Denial of Land Use Plan Amendment as Submitted

MOTION: *I move that the Commission certify Land Use Plan Amendment 1-03 as submitted by San Luis Obispo County.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY:

The Commission hereby denies certification of the Land Use Plan Amendment 1-03 as submitted by San Luis Obispo County and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

Resolution II: Approval of the Land Use Plan Amendment with Suggested Modifications

MOTION: *I move that the Commission certify Land Use Plan Amendment 1-03 for San Luis Obispo County if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:



Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan Amendment 1-03 for San Luis Obispo County if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

Resolution III: Denial of Implementation Plan Amendment as Submitted

MOTION: *I move that the Commission reject Implementation Program Amendment 1-03 for San Luis Obispo County as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment 1-03 as submitted by San Luis Obispo County and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

Resolution IV: Approval of Implementation Plan Amendment with Suggested Modifications

MOTION: *I move that the Commission certify Implementation Program Amendment 1-03 for San Luis Obispo County if it is modified as suggested in this staff report.*



STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Implementation Program Amendment 1-03 for San Luis Obispo County if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS**A. Suggested Modifications to Submitted Coastal Plan Policies Amendments**

1. Modification to Coastal Plan Policies Amendment No. 1 (please see page 2 of Exhibit 1). Delete statement that program for Comprehensive Public Access Planning does not apply to Agricultural Areas as follows:

Policy 12: Comprehensive Public Access Planning

As part of the periodic update of an area plan, the draft plan shall include development of a Comprehensive Public Access Component consistent with Section 30500 of the California Coastal Act ~~(the following shall not apply to agricultural areas):~~ ...

2. Modification to Coastal Plan Policies Amendment No. 2 (page 4 of Exhibit 1). Supplement second paragraph of section J regarding the use of hard ocean bottoms for laying trans-Pacific cables as follows:

San Luis Obispo has been in the unique geographical position of being located in the middle of a state that has major population bases, and also has the offshore geography (hard ocean bottom configurations) conducive to laying trans-Pacific telecommunications cable lines to places like Japan, China and Australia. While conducive to the interests of the cable industry, the hard ocean bottom configurations are sensitive habitat areas to be avoided. Cable lines installed on



underwater rocky outcroppings also have the potential to cause conflicts with fishing by snagging fishing gear. Accordingly, Policy 42 below requires the routing of cable lines to avoid recreation areas and sensitive habitats, among other sensitive resource areas. Within county jurisdiction, Montana de Oro State Park is a major landing site for several telecommunications companies' trans-Pacific cable systems. The City of Morro Bay and Grover Beach also have landing site facilities.

B. Suggested Modifications to Submitted Title 23 Amendments

1. Modification to Section 12 of Title 23 Amendments (please see pages 11-12 of Exhibit 1):

- a. Address relationship between various pending amendments to Section 23.05.050. The submitted amendment does not correspond with the update to the same ordinance approved by the Commission in March 2002 as SLO LCP Amendment No.1-01 Part C. Since the County has not yet acted to accept or reject the Commission's suggested modifications to LCP Amendment 1-01 Part C³, it is premature to propose alternative changes to this section. Therefore, the currently proposed amendment to Section 23.05.050 shall only take effect after September 5, 2004, if the County declines to accept the Coastal Commission suggested modifications to LCP Amendment 1-01 Part C.

- b. Require that all new development implement Best Management Practices to protect coastal water quality and aquatic habitats as follows:

...(2) Best Management Practices – ~~Commercial~~ Non-Residential Development. All new ~~commercial (excluding agricultural)~~ non-residential development subject to discretionary review shall use Best Management Practices (BMPs) to control and prevent pollutants from entering the storm drain system. ...

2. Modification to Section 14 of Title 23 amendments (see pages 12-13 of Exhibit 1). Incorporate standards regarding the application of information regarding project alternatives that avoid and minimize impacts to ESHA to the development review process, and delete exemption for new agricultural roads within environmentally sensitive habitats or their setbacks, as follows:

a. (4) Identifies the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. These identified constraints will be used by the County ~~during the evaluation to evaluate, and require implementation of,~~ project design alternatives ~~prepared by the applicant~~ that result in impacts to ESHA being avoided, ~~or~~ and unavoidable impacts minimized. This ~~evaluation~~ shall also include an assessment of impacts

³ The deadline for action on these modifications has been extended until September 5, 2004. The County has indicated and the Commission has recognized that the County's acceptance of these modifications is contingent upon addressing issues related to how the updated grading and drainage standards apply to agricultural related development, through the Categorical Exclusion process



that may result from the application of fire safety requirements.

d. (6) Alternatives analysis required. ~~Proposed~~ Construction of new, improved, or expanded roads, bridges and other crossings except for those that support existing agricultural operations will only be allowed within required setbacks after an alternatives analysis has been completed. The alternatives analysis shall examine at least two other feasible locations with the goal of locating the least environmentally damaging alternative. If, after completion of the alternatives analysis, the approval authority determines that another less environmentally damaging alternative exists, that alternative shall be utilized and any existing bridge or road within the setback shall be removed and the area of disturbance restored to natural topography and vegetation. If after completion of the alternatives analysis, staff determines that another less-environmentally damaging alternative does not exist, the bridge or road may be allowed only if accompanied by all feasible mitigation measures to avoid and minimize adverse impacts.

3. Modification to Section 16 of Title 23 amendments (see pages 14-15 of Exhibit 1). Delete the proposed exemption of agricultural activities from riparian setback standards as follows:

d. Riparian Setbacks: New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In urban areas (inside the URL) this setback shall be a minimum of 50 feet. In the rural areas (outside the URL) this setback shall be a minimum of 100 feet. A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted best management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats ~~activities under Section 23.05.026.~~

All permitted development in or adjacent to streams, wetlands, and other aquatic habitats ~~should~~ shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures ~~should~~ to be provided include, but are not ~~be~~ limited to: ...



III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Analysis of Land Use Plan Amendments

1. New Development

a. Coastal Act Policies

Section 30250 (in part): (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

b. Analysis

Coastal Plan Policies Amendment No. 8 (pages 6-7 of Exhibit 1):

Periodic Review Recommendation 2.1 is intended to address issues related to the extension of urban services beyond urban services lines (USL). As called for by this recommendation, Coastal Plan Policies Amendment 8 supplements existing Public Works Policy 1 by referencing existing ordinances requiring adequate water and sewer services as implementation measures. The amendment also adds an additional requirement that permitted development outside the USL be the environmentally preferable alternative. These changes will help concentrate development where there are adequate public facilities to accommodate it, and where it will not have cumulative adverse affects on coastal resources, in accordance with Coastal Act Section 30250. Effective implementation of Periodic Review Recommendation 2.1, however, necessitates supplemental ordinances to clarify required information and findings to support Public Works Policy 1.

Coastal Plan Policies Amendment No. 6 (page 6 of Exhibit 1):

This amendment adds a new LCP policy supporting greenbelt formation and maintenance, and the potential use of mitigation banks as an implementation measure, as recommended by Periodic Review Recommendation 2.5. This policy will facilitate efforts to concentrate development, and maximize protection of significant wildland and scenic areas, consistent with Coastal Act Section 30250 and the coastal resource protection policies contained in Chapter 3. While this policy approach is consistent with Coastal Act, effective implementation of the Periodic Review will be dependent upon the future development of area specific standards that maximize opportunities for the establishment and preservation of greenbelt areas, such as those currently being pursued by the Estero Area Plan Update.



Coastal Plan Policies Amendment No. 9 (page 7 of Exhibit 1):

This amendment has been submitted in response to Periodic Review Recommendation 2.6, which seeks to encourage urban infill through amendments to the LCP that provide incentives for development within the USL, such as redevelopment strategies and planning and regulatory mechanisms to transfer development potential from outside the USL to inside the USL. Rather than instituting such changes, the submitted amendment merely adds a new Public Works Policy, to be implemented as a program, that calls on future LCP updates to require new or expanded urban development to be located the urban services line (USL).

Public Works Policies 1 and 4, Section 23.04.021c of the Coastal Zone Land Use Ordinance, and the urban boundaries established in the various area plans currently provide the primary LCP means for implementing Coast At Section 30250, which requires new development to be concentrated within urban areas that have adequate public facilities to accommodate it. The purpose of Periodic Review Recommendation 2.6 and the submitted amendment is to supplement these existing standards with additional tools available to improve implementation of Coastal Act Section 30250. The proposed new Public Works program provides programmatic support for such changes, but relies on future updates to develop specific implementation mechanisms.

c. Conclusion

The amendments supplement the LUP in a manner that provides programmatic support for the establishment of greenbelts, and the pursuit of future LCP amendments that provide additional tools for concentrating development in urban areas with adequate public services, consistent with Coastal Act Section 30250. Effective implementation of the corresponding Periodic Review Recommendations, however, will necessitate subsequent amendments that provide specific development standards and carry out the objectives identified in the voluntary programs established by the amendment.

2. Environmentally Sensitive Habitat Areas**a. Coastal Act Policies**

Section 30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

b. AnalysisCoastal Policies Amendment No. 7 (page 6 of Exhibit 1):

Periodic Review recommendation 4.45 encourages the use of comprehensive off-site mitigations programs to mitigate impacts to fragmented sensitive habitats within urban areas. In response, Phase 1 includes a new policy calling for the County to create such mitigation programs during the update of



general plans. Similar to amendment 6 discussed above, this program is intended to concentrate development in a manner that maximizes protection of significant sensitive habitat areas.

One concern about such an approach is the loss of habitat, albeit degraded, within certain urban areas, which raises potential conflicts with Coastal Act Section 30240. It is therefore essential that future use of off-site mitigation programs be limited to regions where impacts to remaining sensitive areas cannot be avoided. In these instances, the pooling of mitigation efforts into a comprehensive program, rather than pursuing individual mitigation projects on a lot-by-lot basis, can serve to concentrate development in a manner that is most protective of coastal resources, as well as maximize the environmental benefits of the mitigation measures required to compensate for the unavoidable loss of habitat, by applying such mitigation to the implementation of a regional habitat protection program. For example, the establishment of off-site mitigation programs in Los Osos could provide an effective means of offsetting unavoidable impacts to the remaining dune habitat areas within the urban core. A similar program in Oceano could be used to facilitate the restoration and enhancement of remnant wetland areas within the historic Arroyo Grande floodplain.

Effective implementation of Periodic Review recommendation 4.45 will be dependent upon how and when the County applies this new policy during future area plan updates. The Commission will have the opportunity to evaluate the specifics of any proposed off-site mitigation program at that time, including how the program may square with Coastal Act requirements to protect ESHA. With this in mind, the programmatic support of off-site mitigation programs contained in the submitted amendment can be approved as being consistent with Section 30240 and other Chapter 3 policies of the Coastal Act.

c. Conclusion

The new ESHA policy does not provide an adequate response to Periodic Review Recommendation 4.45, but does provide an opportunity for its future implementation. This will facilitate the establishment of improved ESHA protection standards during future LCP updates, and is therefore consistent with Coastal Act Section 30240.

3. Public Access and Recreation

a. Coastal Act Policies

Section 30500 (in part): *(a) Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. However, any local government may request, in writing, the commission to prepare a local coastal program, or a portion thereof, for the local government. Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.*

Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*



Section 30212 (in part): *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: ... (3) Agriculture would be adversely affected. ...*

Section 30213 (in part): *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30222: *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

b. Analysis

Coastal Policies Amendment No. 1 (see page 2 of Exhibit 1):

In response to Periodic Review Recommendation 6.1, Coastal Policies Amendment No. 1 adds a new Shoreline Access Policy encouraging comprehensive public access planning during the update of area plans. The intent of Recommendation 6.1 is to bring the LCP into conformance with Coastal Act Section 30500(a), which requires all LCPs to include a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.

This amendment is inconsistent with this requirement, as well as with Coastal Act policies for public access calling for the protection and enhancement of coastal access opportunities (e.g., Sections 30210, 30211, and 30212) because the proposed program exempts agricultural areas from access planning requirements. While the Commission recognizes the need to avoid conflicts with agriculture when requiring new access (Coastal Act Section 30212 and LCP Policy 2 for Shoreline Access), the Coastal Act also requires coastal access to be protected, planned for, and pursued in all coastal areas, including agricultural.

Agricultural areas provide important public coastal access opportunities throughout the state, and such accessways can be designed and managed to avoid adverse impacts to agricultural production. For example, agricultural areas provide critical links for the California Coastal Trail. Providing these connections, in a manner that is compatible with agricultural production, necessitates that agricultural areas be included within the proposed public access planning program. Accordingly, the amendment can only be found consistent with Coastal Act Sections 302500(a), 30210, 30211, and 30212 if the exception for agricultural areas is deleted.

Also of concern is that the amendment does not effectively carry out Periodic Review Recommendation 6.1, or achieve consistency with Coastal Act Section 30500(a), because it relies on future updates to provide the required public access component. Progress is being made on such an update for the Estero planning area, and the County has initiated efforts to update sections of the North Coast Area Plan regarding the Cambria and San Simeon Acres urban areas. However, there is no current plan to update



the portion of the North Coast Area Plan addressing rural areas, or to update the San Luis Bay and South County Urban Areas. The Coastal Commission's September 29, 2003 letter to the County regarding Periodic Review Implementation identifies the completion of public access components for the Estero and North Coast Urban Areas as a priority for Phase 2, with their submittal to the Commission in 2004. The letter also calls on the County to submit a Phase 3 workplan by January 1, 2005 that includes completion of access plans for the remaining coastal planning areas.

Coastal Policies Amendment No. 2 (see page 3 of Exhibit 1):

This amendment partially responds to Periodic Review Recommendation 6.7 by establishing a program to consider future LCP amendments that may be needed to address the demand for low-cost visitor serving coastal recreation opportunities. Although this program does not provide a complete response to the recommendation, it provides an initial step towards enhancing low-cost visitor and recreational facilities consistent with Coastal Act Section 30213 and other coastal resource protection provisions of the Coastal Act and LCP.

c. Conclusion

The proposed amendments do not effectively implement the Periodic Review access recommendations they are intended to address, because they merely establish voluntary programs to address issues regarding coastal access needs and visitor-serving uses during future LCP updates. Nevertheless, the policies provide an initial step towards improving access and recreation opportunities, with one exception: the statement that public access planning is not required in agricultural areas. As discussed above, agricultural areas provide are an integral part of California's coastal access trail network, and planning for such access is essential to both the protection of agriculture and the enhancement of access and recreation opportunities. As a result, the amendment can be found consistent with the Chapter 3 of the Coastal Act only if it is modified to remove this exemption.

4. Coastal Hazards

a. Coastal Act Policies

Section 30235: Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 (in part): New development shall:(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ...



b. Analysis

Coastal Plan Policies Amendment No. 11 (see Page 7 of Exhibit 1):

This amendment proposes a new Hazards policy that will establish a program to develop areawide shoreline management plans that avoid shoreline armoring where feasible, and minimize the impacts of armoring projects that cannot be avoided. According to Phase 1 documents, this policy is intended to address Periodic Review Recommendation 7.2, which calls for a revision to Hazards Policy 6 that would require shoreline setbacks to be based on a 100-year rather than 75-year economic life. The proposed amendment does not provide a response to this recommendation but, instead, represents a preliminary step towards implementing Recommendation 7.8 calling for the development of areawide shoreline management plans.

Coastal Plan Policies Amendment No. 12 (see Page 8 of Exhibit 1):

The proposed new Hazards Policy encourages the County to develop a dynamic Geologic Hazards Map consistent with the Safety Element of the County's General Plan and updated geologic information. The Phase 1 document indicates that this amendment responds to Periodic Review Recommendation 7.17, which calls for the modifications to the LCP to better identify seismically hazardous areas and restrict development in such areas. The proposed amendment provides an initial step towards implementing this recommendation that is consistent with the Coastal Act hazards policies cited above. Providing an effective response to Recommendation 7.17, however, will be dependent upon the County's ability to implement the proposed dynamic mapping program, and to effectively apply such a program to the development review process.

c. Conclusion

The new hazards policies provide an initial response to Periodic Review recommendations 7.8 and 7.17 that will facilitate improved implementation of Coastal Act Sections 30235 and 30253, if these programs are carried out during future area plan updates. As a priority, the Commission's September 29, 2003 letter to the County regarding Periodic Review implementation looks to the Estero and North Coast Area Plan updates to provide the additional details necessary to address shoreline development in the towns of Cambria and Cayucos, where seawall issues are most prevalent.

5. Energy and Industrial Development**a. Coastal Act Policies**

Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for



long-term commercial, recreational, scientific, and educational purposes.

Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30260 states:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Also see Section 30250, cited on page 10 of this report, requiring new development to be sited in areas with adequate public services.

b. Analysis

Coastal Policies Amendments No. 3 and 4 (see pages 3-4 of Exhibit 1):

In response to Periodic Review Recommendation 10.2, Coastal Policies Amendment 3 supplements Energy Policy 1 by requiring that energy demands, and the need for additional energy facilities, be considered during the update of Area Plans. The purpose of such review is “to ensure that existing policies and standards provide adequate guidance for mitigating the impacts of any potential energy facilities consistent with LCP and Coastal Act policies”. Amendment 4 similarly establishes a policy that relies on future Area Plan updates to provide standards for the abandonment and clean-up of energy and oil facilities called for by Periodic Review recommendation 10.3. While these amendments do not sufficiently carry out recommendations 10.2 and 10.3, they do not conflict with the Coastal Act, and represent a positive step towards updating the LCP in a manner that will better address the impacts to coastal resources associated with available energy supplies and future expansion of energy facilities. As



a result, they are approved as submitted.

Coastal Policies Amendment No. 5 (see pages 4-5 of Exhibit 1):

This amendment provides updated LCP standards to address coastal resource impacts associated with Fiber Optic Cable projects, as suggested by Periodic Review Recommendation 10.1. The new policies are consistent with Coastal Act resource protection requirements because they require cables to be located outside of sensitive resource and recreation areas when feasible, as well as the minimization and mitigation of all unavoidable impacts.

A concern with the proposed language, however, is that it states that hard ocean bottom configurations are conducive to laying cable lines. Such areas are not preferred from a resource protection standpoint, as rock outcroppings support important marine habitat areas, and the installation of cables in such areas can adversely impact marine resources and biological productivity inconsistent with Coastal Act Sections 30230 and 30231. Cable lines on rocky outcrops can also interfere with fishing by snagging fishing gear, in conflict with Coastal Act Section 30234.5. In order to address these issues and bring the amendment into conformance with the Coastal Act, the Commission has proposed modifications that emphasize the need to for cable projects to avoid rocky benthic environments.

c. Conclusion

The proposed standards for fiber optic cable projects will enable better protection of coastal resources during the installation of fiber optics cables, as recommended by Periodic Review Recommendation 10.1 and consistent with the Chapter 3 policies of the Coastal Act. In contrast, the proposed new energy policies rely on future updates to address the coastal resource issues associated with Periodic Review recommendations 10.2 and 10.3. Nevertheless, as a positive step towards addressing these issues, these amendments do not raise a conflict with Chapter 3 of the Coastal Act and can be certified as submitted.

7. Implementation Procedures

a. Coastal Act Policies

Section 30611: When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).

Section 30624 (in part): (a) The commission shall provide, by regulation, for the issuance of coastal development permits by the executive director of the commission or, where the coastal development permit authority has been delegated to a local government pursuant to Section 30600.5, by an appropriate local official designated by resolution of the local government without compliance with the procedures specified in this chapter in cases of emergency, other than an emergency provided for under Section



30611...

Section 13309 of Title 14, Division 5.5 of the California Code of Regulations: “Emergency”, as used in Public Resources Code Section 30624, and these regulations means: a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

b. Analysis

Coastal Plan Policies Amendment No. 10 (p. 7 of Exhibit 1):

Periodic Review Recommendation 12.14 requests the County to coordinate with the Commission regarding alleged emergencies when time allows, particularly, when a proposed emergency action may involve development on lands within the permit jurisdiction of the Commission. In response, the proposed amendment incorporates a program to develop improved coordination and emergency permit processing, including preparation of an Emergency Permit Procedure Manual, as well as Emergency Prevention Implementation Plans for areas susceptible to emergencies such as flood plain areas. Again, this is an amendment that does not adequately implement the Periodic Review recommendation because relies on future amendments to make the needed improvements. Nevertheless, the amendment represents an initial step that is consistent with Coastal Act policies and can therefore be approved as submitted

c. Conclusion

The proposed policy will facilitate interagency coordination on avoiding and responding to emergency situations, consistent with the emergency permitting procedures established by the Coastal Act. While this amendment can be approved as being consistent with the Coastal Act, its future implementation by the County will determine whether it adequately responds to Periodic Review Recommendation 12.14.

8. Miscellaneous

Framework Amendment No. 1 (see page 1 of Exhibit 1):

This section of amendment is not Periodic Review related, and was added to the Phase 1 amendment package during Board of Supervisors hearings. The amendment proposes to add the following new “General Objective” to the description of the Sensitive Resource Areas (SRA) Combining Designation⁴ contained within the Framework for Planning:

General Objectives: The Coastal Zone Land Use Ordinance provides detailed criteria for the review of projects proposed in the Sensitive Resource Area combining designation to achieve the following objectives:

- 1. Environmentally Sensitive Habitats should be identified and protected by construction setbacks, use limitations, and other appropriate regulations.*

⁴ The LCP uses Combining Designations to identify areas where special features, resources, and hazards create the need for more careful project review. These include, but are not limited to, environmentally sensitive habitat areas.



...

8. The preservation of resources shall be balanced with the implementation of safety-related improvement projects.

The section of the LUP proposed for amendment provides background only, and states that the detailed criteria of the Coastal Zone Land Use Ordinance shall be used to achieve Sensitive Resource Area (SRA) objectives. The new SRA objective proposed by the amendment appropriately recognizes that there may be instances where essential public safety improvements cannot avoid sensitive resource areas. In such instances, proposed public safety improvements must still comply with the more specific development standards contained in the LCP. These include LCP provisions that limit development within environmentally sensitive habitats to resource dependent uses (e.g., CZLUO Section 23.07.170.d.), and that require grading and vegetation removal to be minimized (Visual and Scenic Resources Policies 5 and 7). In accordance with the proposed amendments to Section 23.07.170.d, the development of safety related improvements within ESHA or their setbacks would also be subject to a rigorous alternatives analysis.

For example, limited safety related modifications to Highway One, such as accommodating a turning lane into the town of Harmony, *may* be needed if analysis shows a significant public safety concern. Such modifications could involve construction in the Sensitive Resource Area between Cayucos and Cambria, and must be sited and designed in a manner that complies with the specific resource protection standards of the LCP. In accordance with the proposed objective, such development may be permitted only where it is absolutely essential to public safety, and where all applicable development standards of the LCP have been satisfied. In contrast, projects intended to increase levels of service in this area, such as expanding Highway One beyond a two-lane road, or to address non-essential roadway enhancements to facilitate traffic flow, would be inconsistent with the proposed objective and the more specific development standards of the LCP, including those mentioned above. In addition, Chapter 4 of the North Coast Area Plan precludes any expansion of Highway 1 in this area, beyond minor safety improvements, by stating:

In order to maintain the scenic quality of the highway, only minor safety improvements are proposed in rural areas such as removing excessive curves in the Piedras Blancas area.



B. Analysis of Implementation Plan Amendments

1. Water Quality and Marine Resources

a. LUP Provisions

Chapter 9 of the Coastal Plan Policies document of the San Luis Obispo County certified Land Use Plan (LUP) contains the following policies related to the protection of water quality and coastal watersheds:

Policy 8: Timing of Construction and Grading. Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 9: Techniques for Minimizing Sedimentation. Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 10: Drainage Provisions. Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHOULD BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

Policy 11: Preserving Groundwater Recharge. In suitable recharge areas, site design and layout shall retain runoff on-site to the extent feasible to maximize groundwater recharge and to maintain in-stream flows and riparian habitats. [THIS POLICY SHOULD BE IMPLEMENTED AS A STANDARD.]



b. Analysis

Section 12 of CZLUO Amendments (pages 11 - 12 of Exhibit 1):

The submitted amendment to the Drainage Standards contained CZLUO Section 23.05.050 requires new development to use Best Management Practices to control and prevent polluted runoff. The proposed standards are generally consistent with the standards that have been recently established in the Avila beach and Cambria Commercial Area Specific Plans, and would apply these standards County wide. The currently proposed version, however, has been revised by the County to require BMP's only for residential and commercial development (as opposed to residential and non-residential), and to specifically exempt agriculture. Other types of development that are exempted from using BMP's by this change include public works, cultural, educational, and recreation.

The proposed exemptions do not effectively implement LUP Water Quality Policies cited above, or the Environmentally Sensitive Habitats policies cited later in this report, because they do not require *all* new development protect of coastal waters and aquatic habitats. For example, public works projects including road maintenance and construction, and grading/land clearing associated with new agricultural development, can result in erosion, sedimentation, and changes to natural drainage patterns that diminish water quality and the biological productivity of coastal waters. These and other impacts to coastal water quality posed by all types of new development must be addressed in order to carry out LUP Coastal Watersheds Policies 8, 9, and 10. Accordingly, Suggested Modification B.1.b revises the amendment to apply BMP requirements to all new residential and non-residential development.

To address concerns regarding the impacts of such requirements on agricultural productivity, the Commission is currently working with the County and the County's Agricultural Liaison Board on a categorical exemption that would both ensure water quality protection and minimize permitting requirements for agriculturally related development.

Another problem with the proposed amendment is that it does not correspond with the update to the same IP drainage standards approved by the Commission in March 2002 as SLO LCP Amendment No.1-01 Part C. Since the County has not yet acted to accept or reject the Commission's suggested modifications to LCP Amendment 1-01 Part C⁵, it is premature to propose alternative changes to this section. To address this issue, Suggested Modification B.1.a establishes an effective date of September 5, 2004, if and only if the County declines to accept the Coastal Commission suggested modifications to LCP Amendment 1-01 Part C. Such a modification is necessary to clarify which version of the drainage ordinance will be used to implement LUP Coastal Watershed Policies cited above.

⁵ The deadline for action on these modifications has been extended until September 5, 2004. The County has indicated that acceptance of these modifications is contingent upon resolving issues regarding the application of the updated grading and drainage standards to agricultural related development through a Categorical Exclusion currently being developed by the County. The Commission's September 29, 2003 letter calls for submittal of the proposed exclusion for Commission approval prior to March 1, 2004, in order to enable certification of both the exclusion and the grading and drainage ordinance update by August 31, 2004.



c. Conclusion

The proposed amendment of the IP Drainage Ordinance will not carry out LUP Policies 8,9, and 10 for Coastal Watersheds, or other LUP Policies protecting sensitive aquatic habitats, unless the requirement to control and prevent polluted runoff is applied to all new development that has the potential cause erosion and sedimentation. Clarifying the relationship of two pending amendments to the current drainage ordinance is also necessary to effectively implement Coastal Watershed Policies. The submitted amendment must therefore be modified to address these issues.

2. Environmentally Sensitive Habitat Areas

a. LUP ESHA Policies

LUP Policies regarding the protection of ESHA that are applicable to the proposed IP amendments include but are not limited to the following:

Policy1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats

New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. (THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 2: Permit Requirement

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

Policy 3: Habitat Restoration

The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170 OF THE CZLUO.]

Policy 5: Protection of Environmentally Sensitive Habitats



Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

Policy 6: Principally Permitted Use

Principally permitted uses in wetlands are as follows: hunting, fishing and wildlife management; education and research projects. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-172 OF THE CZLUO.]

Policy 13: Vehicle Traffic in Wetlands

No vehicle traffic shall be permitted in wetlands. This shall not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland. Pedestrian traffic shall be regulated and incidental to the permitted uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 14: Adjacent Development

Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values on the site. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.172 OF THE CZLUO.]

Policy 15: Wetland Buffer

In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measures from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose on existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted.

The minimum buffer strip may be adjusted by the county if the minimum setback



standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Policy 18: Coastal Streams and Riparian Vegetation

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological functioning of coastal streams shall be protected and preserved. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

Policy 23: Streambed Alterations

Channelizations, dams or other substantial alterations of rivers and streams shall be limited to: a) necessary water supply projects, b) flood control projects when there are no other feasible methods of protecting existing structures in the flood plain and where such protection is necessary for public safety or to protect existing development, and c) development where the purpose is to improve fish and wildlife habitat. All projects must employ the best feasible mitigation measures. Maintenance and flood control facilities shall require a coastal development permit. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

Policy 24: Riparian Vegetation

Cutting or alteration of naturally occurring vegetation that protects riparian habitat is not permitted except for permitted streambed alterations (defined in Policy 23) and where no feasible alternative exists or an issue of public safety exists. This policy does not apply to agricultural use of land where expanding vegetation is encroaching on established agricultural uses. Minor incidental public works project[s] may also be permitted where no feasible alternative exists including but not limited to utility lines, pipelines, driveways and roads. Riparian vegetation shall not be removed to increase agricultural acreage unless it is determined that no impairment of the functional capacity of the habitat will occur. Where permitted, such actions must not cause significant stream bank erosion, have a detrimental effect on water quality or quantity, or impair the wildlife habitat values of the area. This must be in accordance with the necessary permits required by Section 1601 and 1603 of the California Fish and Game Code. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174



OF THE CZLUO.]

Policy 26: Buffer Zone for Riparian Habitats

In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, education or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads where it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

Policy 27: Protection of Terrestrial Habitats

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis on protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 33: Protection of Vegetation

Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disturbance of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]



b. Analysis

Section 14 of CZLUO Amendments (pages 12-13 of Exhibit 1):

This section of the amendment has two components. The first supplements the application requirements for development within or adjacent to ESHA contained in Section 23.07.170a of the CZLUO. This partly responds to Periodic Review Recommendation 4.7, which calls for LCP biological report standards to be updated. In accordance with the recommendation, the amendment requires biological reports to identify biological constraints, and to assess the impacts of implementing fire safety requirements.

A notable difference between the amendment and Periodic Review Recommendation 4.7 is the way in which this information will be applied to the development review process. Recommendation 4.7 states that in addition to identifying constraints, biological reports should identify where revisions to the project are available to avoid and minimize impacts on ESHA, and that the County should apply this information to its evaluation of project alternatives. The intent of the recommendation is to ensure that the process for identifying and evaluating project alternatives effectively addresses the particular needs and biological characteristics of the habitat area that may be impacted. For example, if the sensitive habitat type at issue is a Monarch butterfly over-wintering area, the biological report should address siting and design options that would prevent changes to the unique microclimates upon which over-wintering habitats depend.

In comparison, the submitted amendment does not require biological reports to address alternatives. Rather, the amendment states that the information regarding biological constraints “will be used by the County during the evaluation of project alternatives **prepared by the applicant** that result in impacts to ESHA being avoided **or** minimized” (emphasis added). This proposal does not effectively implement LUP Policy 1 because it implies that the only alternatives that may be considered are those submitted by the applicant. Such an approach does not ensure that the full range of alternatives available to avoid non-resource dependent development within ESHA will be considered and pursued. The amendment is additionally ineffective at implementing Policy 1 because it states that impacts to ESHA should be avoided **or** minimized. The LUP does not provide such an option; non-resource dependent development within ESHA must be avoided. Finally, the amendment fails to effectively implement the full range of LUP ESHA policies cited above because it merely calls on the information regarding biological constraints to be applied to an evaluation of project alternatives, without specifically requiring implementation of the least environmentally damaging option.

To resolve these issues, the suggested modifications clarify that information regarding biological constraints shall be used by the County to evaluate and implement project alternatives that avoid impacts to ESHA (including but not limited to the alternatives submitted by the applicant). In order to emphasize the need to avoid impacts to ESHA, and at the same time recognize that impacts to ESHA cannot always be prevented consistent with the constitutional rights granted to private property owners, the suggested modifications clarify that impacts to ESHA shall be minimized only when such impacts cannot be avoided. These modifications are necessary to implement LUP ESHA Policies as follows:

- Requiring avoidance of non-resource dependent development in ESHA is required to implement LUP ESHA Policies 1, 6, and 27.



- Requiring the implementation of the least environmentally damaging feasible alternative is necessary to provide maximum feasible mitigation as required by LUP ESHA Policy 2.
- Expanding alternatives analyses to consider options other than those submitted by the applicant is necessary to implement LUP ESHA Policy 2 requiring mitigation measures to be developed by a qualified professional, and to effectively limit exceptions to setback standards to instances where such setbacks would prevent the development of a principally permitted use, as required by Policies 15 and 26. Requiring consideration of a full range of alternatives is also necessary to ensure that development is sited and designed to prevent significant disruption of ESHA, as required by LUP ESHA Policies 1, 5, 18, and 27.
- Emphasizing the need to avoid ESHA impacts is similarly necessary to limit the exceptions to ESHA setback standards to instances where compliance with such standards would prohibit the development of a principally permitted use, consistent with LUP ESHA Policies 15 and 26. It is also necessary to ensure that new development disturbs the minimum amount possible of rare or endangered plant or wildlife habitat, as required by Policy 33.

The second component of the amendment partially responds to Recommendation 4.24, calling for improvements to ESHA setback standards when new or improved roadways are proposed within and adjacent to riparian and wetland habitats. This is achieved by supplementing standards for development within and adjacent to environmentally sensitive habitats in a manner that requires thorough consideration of alternative alignments. The amendment implements an additional section of Recommendation 4.24 by requiring “after-the-fact” permit applications for development that has illegally occurred in sensitive habitats or their setbacks to assess all options of restoring and enhancing the pre-existing on-site habitat values, and to provide off-site mitigation that both offsets the temporary impacts of the violation and addresses the potential for restoration efforts to fail. These changes will improve implementation of LUP ESHA Policies including but not limited to Policies 1, 2, 3, 13, 14, 15, 23, and 26.

Notwithstanding these beneficial improvements, three changes made during the local review to this section prevent the amendment from effectively implementing LUP ESHA protection standards and Periodic Review Recommendation 4.24. First, the County limited the requirement to evaluate less environmentally damaging road alignments to new roads only. This change inappropriately restricts the consideration of alternatives where improvements or expansion of existing roads are proposed. Title 14 of the California Code of Regulations, at Sections 13252 and 13253, specifically requires a coastal development permit for repairs or improvements to existing development, including roads, within ESHA. The purpose of this requirement is to ensure that potential adverse impacts to ESHA associated with such repairs and improvements are avoided and minimized consistent with the ESHA protection provisions contained in Chapter 3 of the Coastal Act and certified LCP’s.

In this case, the proposal to exempt the improvement or expansion of existing roads within ESHA from the requirement to consider alternative alignments exemption fails to implement LUP ESHA Policies 1 and 2, which prohibit non-resource dependent development within ESHA and prevent significant disruption of ESHA. Roadways are not dependent upon habitat resources, and their construction or expansion can adversely impact sensitive habitat areas by causing erosion, sedimentation, diminished



water quality, and habitat removal and fragmentation. Eliminating the need to consider alternative alignments also conflicts with LUP ESHA Policies 3 and 5 calling for restoration of damaged habitats; Policy 14, requiring new development to be located as far way from wetland habitats as feasible; Policy 13, prohibiting vehicle traffic in wetlands; and, Policy 23 restricting streambed alterations to specified uses that do not include roadways. The proposed amendment will not effectively implement these LUP Policies unless it is modified to apply to the improvement/expansion of existing roads in ESHA as well as new roads.

The second change to the amendment that prevents effective implementation of LUP ESHA protection policies is the proposal to exempt new or expanded roads within ESHA that support existing agricultural operations from the need to consider alternative alignments. This proposal does not adequately carry out LUP ESHA protections for the same reasons discussed above. Accordingly, effective implementation of LUP ESHA Policies necessitates the deletion of this exemption. It should be noted that efforts to develop a categorical exclusion for agricultural development activities that do not pose adverse impacts on coastal resources are currently underway, and provides the appropriate opportunity to ensure that such regulatory requirements do not unnecessarily interfere with agricultural operations.

Finally, the amendment was revised at the local level to delete language regarding that application of alternative analyses. As originally proposed by County staff, the Phase 1 amendments required implementation of the least environmentally damaging alignment where new or expanded roadways encroach within sensitive habitat areas and their setbacks. As discussed above, requiring an evaluation of alternative to avoid and minimize impacts on ESHA without requiring their implementation will not adequately implement LUP ESHA standards. As a result, the amendment must be modified to restore this requirement.

Other outstanding components of Periodic Review Recommendations 4.7 and 4.24 that are to be addressed as Phase 2 priorities pursuant to the Commission's September 29, 2003 letter include the need for specific LCP standards for mitigating unavoidable impacts, as detailed in Periodic Review Recommendations 4.15, 4.16, and 4.17.

Section 15 of CZLUO Amendments (pages 13-14 of Exhibit 1):

The proposed amendment to CZLUO Section 23.07.174b partially responds to Periodic Review Recommendations 4.17 and 4.27(a) by limiting streambed alterations in accordance with LUP Policy 23, and by requiring measures to avoid and mitigate impacts to sensitive habitats and water quality. As noted above, the Commission has identified the outstanding components of Recommendation 4.17, calling for specific mitigation standards to address unavoidable impacts of allowable streambed alterations, to be addressed as a Phase 2 priority.

Section 16 of CZLUO Amendments (pages 14-15 of Exhibit 1):

The submitted change to Section 23.07.174 of the CZLUO is intended to respond to Periodic Review Recommendation 4.23 calling for greater riparian setbacks, but is not successful in this regard. Recommendation 4.23 calls for a 100-foot riparian setback standard in urban areas where feasible, and where such a setback would better protection of stream resources. Contrary to this recommendation, the



amendment retains the existing 50-foot setback standard for urban areas.

Recommendation 4.23 further suggests that the LCP be amended to require both urban and rural development to provide that maximum feasible setback from riparian vegetation, as determined through a site-specific constraints analysis. In contrast, the amendment states that more than the minimum setback distance is “preferable” (not required), depending on parcel configuration, slopes (topography), and other environmental considerations.

Although the amendment does not effectively implement recommendation 4.23, the standard of review is whether it is adequate to carry out the certified LUP. In this respect, the amendment implements the riparian setback requirements contained in LUP ESHA Policy 26 with one exception - the statement that riparian setback standards do not apply to agricultural activities under Section 23.05.026 of the CZLUO.⁶ ESHA Policy 26 limits agricultural development within riparian setbacks to “existing nonstructural agricultural developments in accordance with adopted best management practices”. In comparison, the referenced grading permit exemption is not limited to existing agricultural operations, and is not contingent upon the implementation of best management practices. Thus, the proposed amendment does not effectively implement Policy 26, which expressly requires new agricultural development to comply with LCP riparian setback standards.

The pending grading and drainage ordinance update previously discussed in this report poses another problem for the proposed reference to CZLUO Section 23.05.026. If the County accepts the Commission’s suggested modifications to the grading and drainage ordinance update, the proposed cross-reference will no longer be applicable. To address this issue and provide effective implementation of LUP ESHA policies, the amendment can only be approved if it is modified in a manner that limits riparian setback exemptions for agricultural development to those that are provided in LUP Policy 26. (Agricultural exceptions to limits on the alteration of riparian vegetation provided by LUP Policy 24 are currently contained in CZLUO Section 23.07.174e, and will not be changed by this amendment.)

An additional concern regarding Section 16 of the CZLUO amendments is the use of the word “should”. Rather than *requiring* permitted uses within riparian setback areas to include measures to protect aquatic habitats, water quality, and biological productivity, the proposed ordinance states that such measures *should* be provided. This implies that the incorporation of measures to protect riparian resources is optional. The amendment therefore fails to carry out LUP ESHA Policies 23 and 26, which state that development within streams and riparian setbacks *must* provide maximum mitigation. Therefore, the amendment will only carry out the LUP if it is modified to require implementation of measures to protect riparian habitats and water quality.

Finally, Section 16 of the amendment partially responds to Recommendation 4.27(a) by updating standards for permitted uses within riparian, wetland, and aquatic habitat setbacks to requiring such development to prevent loss or disruption of habitat values and maintain and enhance biological productivity. This is to be achieved, among other ways, by incorporating design measures that protect water quality, minimize disturbance of natural drainage courses, and minimize vegetation removal.

⁶ Section 23.05.026 exempts “agricultural cultivation activities including preparation of land for cultivation, other than grading for roadwork or pads for structures” from the requirement to obtain a grading permit.



Outstanding portions of recommendation 4.27a that are to be addressed in Phase 2 implementation efforts include the incorporation of specific drainage control standards (e.g., through acceptance of the Commission's modifications to the Grading and Drainage Ordinance Update), and establishing standards for the artificial breaching of beach berms that support coastal lagoons. Finally, the amendment responds to Recommendation 4.29 by providing clarifications subsection (e) of 23.07.174. These changes will improve the IP's ability to carry out both the general and riparian specific ESHA Policies cited above.

c. Conclusion

The proposed amendment will generally enhance implementation of LUP ESHA policies, and provides an initial step towards implementing Periodic Review Recommendations 4.7, 4.17, 4.21, 4.24, 4.27(a), and 4.29. However, the amendment includes changes that do not effectively carry out the LUP. As detailed above, these include:

- limiting consideration of the full range of alternatives to development within and adjacent to ESHA to those that have been identified by the applicant;
- requiring the evaluation, but not implementation, of the least environmentally damaging alternative when development is proposed within or adjacent to ESHA;
- providing the option of minimizing, rather than avoiding, impacts to ESHA;
- exempting new agricultural roads from the requirement to avoid sensitive habitat areas;
- exempting agricultural development from the need to comply with riparian setbacks; and
- establishing the need to protect aquatic habitats, water quality, and biological productivity as an optional requirement.

Therefore, the implementation amendments can only be approved as being adequate to carry out the LUP if they are modified as suggested.

3. Public Access and Recreation

a. LUP Provisions

LUP Shoreline Access Policy 2 states in part:

Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. ...



b. Analysis

Section 10 of the CZLUO Amendments (page 11 of Exhibit 1):

This section of the amendment has been submitted in response to Periodic Review Recommendation 6.02, which calls for LCP amendments to require bluff-top lateral access where lateral access seaward of the bluff is not available or adequate. In accordance with this recommendation, the amendment requires consideration of alternative lateral access routes, in light of public safety and other constraints, where there are obstacles to lateral access between the Mean High Tide Line and the toe of the bluff. This will improve implementation of LUP Shoreline Access Policy 2.

4. Coastal Hazards**a. LUP Provisions**

LUP Hazard Policy 1 states:

All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].

LUP Hazard Policy 4 establishes limitations on the construction of shoreline structures as follows:

Construction of shoreline structures that would substantially alter existing landforms shall be limited to projects necessary for:

- a. protection of existing development ...

Where shoreline structures are necessary ... , siting shall not preclude public access to and along the shore ...

b. Analysis

Section 7 of the CZLUO Amendments (pages 10 of Exhibit 1):

These sections of the amendment partially implement Periodic Review Recommendations 7.03 by eliminating the IP's use of a "stringline" method of determining setbacks. Elimination of this method will enhance the IP's ability to carry out the requirements of LUP Hazard Policy 1. The amendment does



not address portions of the recommendation that call for using a 100 year rather than 75 year timeframe as the “life of a structure”, and supplementing bluff setbacks with a safety factor developed through an Areawide Shoreline Management Plan. As outlined in the Commission’s September 29, 2003 letter to the County, these outstanding issues should be addressed by the upcoming update of the Estero and North Coast Area Plan Updates, which are expected to address shoreline armoring issues in Cayucos and Cambria, where they are most prevalent.

Section 11 of the CZLUO Amendments (page 11 of Exhibit 1):

This amendment implements Periodic Review recommendation 7.9 by requiring public access easements or record offers to dedicate to include mapped locations of the easement area. This change will help prevent shoreline development that interferes with public access, as called for LUP Policy 4 for hazards.

Sections 8 and 9 of the CZLUO Amendments (pages 10-11 of Exhibit 1):

These sections of the amendment implements Periodic Review Recommendation 7.15 by updating the required contents of geologic evaluation reports for development within geologically hazardous areas. Specifically, the amendment requires such reports to be prepared according to County established standards, and consistent with the guidelines developed by the State Department of Conservation and other relevant agencies. These changes will enhance implementation of LUP Hazard Policy 1.

Section 13 of the CZLUO Amendments (page 12 of Exhibit 1):

The proposed change to Section 23.05.090a.1 incorporates the language recommended by Periodic Review recommendation 7.01 to limit shoreline structures to those that are necessary for the protection of *principle* structures only. This will enable better implementation of LUP limits on shoreline structures established by Hazards Policy 4.

c. Conclusion

The proposed ordinance amendments will generally enhance implementation of LUP Hazards Policies 1 and 4, as well as LUP access policies previously cited, by establishing better application standards, a more consistent method of determining setbacks, improved recordation of access easements, and more stringent limits on shoreline structures. Additional work is required to respond to Periodic Review recommendations calling for areawide shoreline management plans, greater shoreline setbacks, and restrictions against future seawalls for new development. .

5. Implementation Procedures

a. LUP Provisions and Minimum Requirements of the California Code of Regulations

A fundamental goal of the San Luis Obispo County certified LUP is to provide maximum opportunity for public participation in the planning process. The Coastal Zone Framework for Planning (Framework) includes 15 general goals that describe the purpose of the LCP and are to be furthered by LCP amendments and updates (page 1-3 of the Framework).



General Goal 11.d on page 1-8 of the Framework states: Encourage maximum public participation in the decision making process when new plans are developed and when development is being reviewed.

In order to carry out this LUP goal and meet the minimum state requirements for LCP implementation, the propose implementation amendments must conform to Sections 13560-13572 of the California Code of Regulations, cited (in part) below:

Article 17. Local Coastal Program Implementation Regulations

§ 13560. Scope of Article.

The provisions of this Article shall constitute minimum standards of notice and hearing requirements for local governments and for the Commission in reviewing development projects after certification of a local coastal program.

§ 13563. Existing Local Procedures.

Existing local government notice and hearing procedures which are in substantial compliance with the provisions of these regulations may be reviewed and certified by the Commission as part of the local coastal program.

§ 13565. Notice of Appealable Developments.

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information:

- (1) a statement that the development is within the coastal zone;*
- (2) the date of filing of the application and the name of the applicant;*
- (3) the number assigned to the application;*
- (4) a description of the development and its proposed location;*
- (5) the date, time and place at which the application will be heard by the local governing body or hearing officer;*
- (6) a brief description of the general procedure of local government concerning the conduct of hearing and local actions;*
- (7) the system for local and Coastal Commission appeals, including any local fees*



required.

§ 13566. Public Hearing on Appealable Developments.

At least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns regarding the project. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13565. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

...

§ 13570. Finality of Local Government Action.

A local decision on an application for a development shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted as defined in Section 13573.

§ 13571. Final Local Government Action-Notice.

(a) Notice After Final Local Decision. (This section shall not apply to categorically excluded developments.) Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13570, the local government shall notify by first class mail the Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

....

§ 13573. Exhaustion of Local Appeals.

(a) An appellant shall be deemed to have exhausted local appeals for purposes of Section 13111 and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the local appellate body (bodies) as required by the local government appeal procedures; except that exhaustion of all local appeals shall not be required if any of the following occur:



(1) *The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.*

(2) *An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.*

(3) *An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.*

(4) *The local government jurisdiction charges an appeal fee for the filing or processing of appeals.*

(b) *Where a project is appealed by any two (2) members of the Commission, there shall be no requirement of exhaustion of local appeals. Provided, however, that a local government may provide, by ordinance, that notice of commissioner appeals may be transmitted to the local appellate body (which considers appeals from the local body that rendered the final decision), and the appeal to the Commission may be suspended pending a decision on the merits by that local appellate body. If the decision of the local appellate body modifies or reverses the previous decision, the commissioners shall be required to file a new appeal from that decision.*

b. Analysis

Section 1 of the CZLUO Amendments (page 9 of Exhibit 1):

The proposed amendment revises the description of appealable development contained in Section 23.01.043c of the Coastal Zone Land Use Ordinance (CZLUO) by clarifying that County action on permit applications including any Variance, Exception, or Adjustment, can be appealed to the Coastal Commission for the specific types of development listed by the ordinance. This amendment is intended to implement Periodic Review Recommendation 12.18, which recommends that the ordinance be revised to recognize all variances as conditionally permitted development that is appealable to the Coastal Commission pursuant to Coastal Act Section 30603⁷. The proposed amendment falls short of implementing the recommendation because, as amended, the appealability of variances remains dependent upon the other criteria established by Section 23.01.043c of the CZLUO.

Although the amendment is inadequate to respond to the recommendation, it does not raise any new conflicts with the certified LUP or the California Code of Regulations. The Commission has identified the appealability of variances as a priority issue to be addressed by Phase 2. Accordingly, the Commission approves this portion of the Phase 1 amendment as submitted.

⁷ Coastal Act Section 30603(a) states in part: (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: ... (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500)..



Section 2 of the CZLUO Amendments (page 9 of Exhibit 1):

This amendment has been submitted in response to Periodic Review recommendation 12.11, which calls for revisions to CZLUO Section 23.01.043c4 to recognize that when any portion of a proposed development involves a conditional use, the entire project is appealable to the Coastal Commission⁸. The proposed amendment does not implement this change, but merely corrects an existing reference to the LUP's "Table O"⁹. Although the change does not adequately carry out the Periodic Review Recommendation, it provides a clarification that will benefit LUP implementation and therefore can be approved as submitted.

Sections 5 and 6 of the CZLUO Amendments (pages 9-10 of Exhibit 1):

This amendment implements Periodic Review Recommendation 12.14 by calling on the Planning Director to consult with the California Coastal Commission regarding emergency development activities. This change will facilitate improved interagency coordination, consistent with the LCP administration provisions set forth on page 8-7 of the LUP's framework for planning that specifically calls for coordination of land use decisions with other agencies.

Title 21 Amendments (Pages 20-21 of Exhibit 1):

The proposed amendments to Title 21 have been submitted in response to Periodic Review Recommendation 12.16, which calls for LCP amendments to both Title 23 standards for non-conforming uses and structures, as well as Title 21 standards regarding the adjustment of non-conforming parcels of land. The amendment implements the latter by identifying that lot-line adjustments are limited to 4 or fewer adjoining parcels, and must conform to the County's General Plan, Specific Plan, Local Coastal Program and zoning and building ordinances. The amendment thereby enhances the IP's ability to carry out the range of LUP resource protection policies cited by this report in response to applications for lot line adjustments.

Re-submittal of Miscellaneous and Procedural Changes (Pages 23-48 of Exhibit 1):

An important component of the amendment package that implements Periodic Review Recommendation 12.7 calling for improvements to permit processing procedures is the re-submittal of procedural and miscellaneous changes previously acted on by the Commission as San Luis Obispo County Local Coastal Program Amendment No. 1-01 Part B. The re-submittal includes all but one of the previously adopted suggested modifications. These changes:

- Clarify public hearing, noticing, and appeal procedures;
- Clarify the circumstances under which the exhaustion of local appeals is not required in order to file an appeal with the Coastal Commission;

⁸ Coastal Act Section 30603(a)(4)

⁹ Table O, contained in the LUP's Framework for Planning, lists designates allowable uses per land use designation as either principally permitted or special (i.e., conditional).



- Change the timeframe in which a public hearing on a Minor Use Permit may be requested so that a minimum 7 day notice period is provided for appealable development;
- Modify the procedures for Final Local Action Notices to ensure that such notices are not sent prior to the expiration of local appeal periods; include a description of appeal procedures; and, are sent for County actions on both appealable and non-appealable development.
- Replace the reference to LCP maps with a reference to the LCP's Rules of Interpretation for determining whether a project is within a Sensitive Resource Area. This clarifies that the location of development in relationship to sensitive resource areas must be determined in accordance with the actual location of the resource, rather than a depiction on a map. For example, if there is a dispute about the location of Monterey pine forest habitat, which is generally mapped in the LCP as sensitive "terrestrial habitat" ESHA (TH), the rules of interpretation would dictate that the actual presence of pine habitat on the ground would be determinative, not the existing LCP map of TH.
- Update the standards for animal raising and keeping facilities to require all such facilities to include water quality protection measures and clarify that a coastal development permit is required for commercial horse keeping facilities.

The one modification that was not accepted by the County was the suggested deletion of the IP's reference to post-certification maps in the ordinance describing appealable development. The intent of this modification was to ensure that the determination of appealability be made according to actual site as opposed to maps with limited accuracy.

The County has not carried forth this modification in its re-submittal. However, the submittal does incorporate the suggested modification that references the existing CZLUO Rules of Interpretation for resolving questions regarding the location of development within a Sensitive Resource Area. According to Section 23.01.041c(3) of these Rules identifies that where a Sensitive Resource Area boundary is indicated as approximately following a physical feature such as a stream, the boundary location is to be determined in accordance with the actual character and extent of the feature. This is a minor improvement that merely provides a cross reference to existing provisions of the CZLUO, and fails to address the problem that existing LCP SRA designations (as certified in 1988) do not accurately cover the full range of ESHA that currently exists in the San Luis Obispo County coastal zone. For example, significant areas coastal dune scrub habitat that provides habitat for the federally threatened Morro shoulderband snail, as well as important coastal grassland habitats that support rare plants and animal, are not currently designated as ESHA by the LCP. The proposed cross-reference to the rules of interpretation does not address these deficiencies, and therefore does not effectively respond to Periodic Review Recommendations 4.1 or 12.7. Resolution of this issue is identified as high priority for Phase 2 by the Commission's September 29, 2003 letter to the County regarding Periodic Review Implementation.

c. Conclusion



In sum, the re-submittal provides important corrections to various procedural components of the IP that partly respond to Periodic Review Recommendation 12.7, help bring implementation procedures into conformance with the California Code of Regulations, and will enhance the County and the Coastal Commission's ability to carry out the resource protection policies of the certified LUP. Detailed findings for the specific changes included in this component of the amendment are provided in the findings adopted by the Commission on August 8, 2002, which are incorporated by reference and attached to this report as Exhibit 4. However, a critical procedural clarification omitted from this amendment submittal is one that requires ESHA delineations to be based on the actual presence and locations of biological resources, as opposed to a location shown by a map. Addressing this issue will be a critical component of Phase 2 implementation efforts.

III. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's review and development process for Local Coastal Programs and amendments to them has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does utilize any environmental information that the local government has developed. In this case, the County of San Luis Obispo certified Negative Declarations that found the amendments would not have significant environmental effects. However, as detailed in the findings of this report, the Commission has identified certain components of the amendment that pose adverse impacts on coastal resources, and has suggested modifications to address these concerns. Therefore, only if the amendment is modified as suggested will significant adverse environmental effects be avoided consistent with the California Environmental Quality Act.

